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CURRENT TOPICS

Crichel Down and After

THE sequel to the Crichel Down Inquiry, announced by Sir THOMAS DUGDALE in his resignation speech in the Commons on 20th July, is that there will be an independent review into the organisation of administering Crown Lands, and " a thorough examination of the organisation and methods adopted within the Ministry by the Agricultural Land Commission for dealing with transactions in agricultural land." Sir Thomas stated that it was no part of this Government's philosophy that the State should continue to own and manage agricultural land suitable for sale. Where agricultural land which was acquired compulsorily or under threat of compulsion was no longer wanted by the original acquiring department or immediately by any other department possessed of compulsory powers for a purpose for which the use of those powers would be justified, then the land would be sold. It would not be transferred from one Government department to another unless at the time of transfer the receiving department could and would have bought the land compulsorily if it had been in private ownership. In future, where circumstances showed that the land could properly be offered to a former owner or successor who could establish his claim, this would be done at a price assessed by the district valuer as being the current market price, but this could not be applied retrospectively, except that they were prepared to apply it, so far as they could, to Crichel Down. A diagnosis of and remedy for the evils disclosed in the Crichel Down report also appeared in the report of the Committee appointed to consider whether certain civil servants should be transferred to other duties. After stressing the effect in present times of the actions of civil servants in the interests of the private citizen, the report exhorted civil servants " to bear constantly in mind that the citizen has a right to expect, not only that his affairs will be dealt with effectively and expeditiously, but also that his personal feelings, no less than his rights as an individual, will be sympathetically and fairly considered."

The Necessity of a *Lis*

A NOTEWORTHY exemplification of the well-settled rule that the English courts have in general no power to decide hypothetical questions is to be found in the case of *W. J. Webster, Ltd.* v. *Customs and Excise Commissioners* (*The Times*, 24th July), which was an action for a declaration that a certain type of article, a picture frame intended to be used by London County Council art students and to be permanently embossed with the letters " L.C.C.," was not subject to purchase tax. According to the contention of the plaintiffs, such frames, by reason of the lettering inscribed on them, fall outside the category of articles of a kind used for domestic or office purposes. The facts were that the plaintiffs had received an invitation from the county council to supply the frames, but that at the time when the writ was issued there was no contract between the plaintiffs and the council. In these circumstances the declaration which the intending suppliers sought was a declaration as to what the position would have been had a contract come into existence, and a

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decision one way or the other would obviously have been useful to them as a guide and as a factor in fixing estimates and tenders. Nevertheless Mr. Justice SELLARS upheld the commissioners' objection that on these facts the court had no power to make a declaration. His lordship said that it might be unsatisfactory that there was no convenient procedure whereby a trader could ascertain beforehand what the position was with regard to tax, but that seemed to be the situation which confronted every citizen when he had to determine his course of action within the law.

Contempt Applications

WE recently took occasion (*ante*, p. 480) to comment on the fact that the legal profession's monopoly in the courts is one of representation and not, strictly, of audience. Every citizen, we recalled, is entitled to be heard in his own quarrel. The significance of the last four words is pointed by a ruling of Mr. Justice VAISEY, shortly reported in *The Times* of 21st July. His lordship referred to decisions which held that the court would not hear an application for a writ of attachment except by counsel. The matter before him was only different in that it was an application to commit for contempt. It was made by a litigant in person. The learned judge said that not only was such an application in the nature of criminal proceedings, but it was a giving of information to the court on which the court was asked to protect its own honour and to see that its orders were obeyed. That was a matter on which the court would not be addressed by anyone except counsel at the Bar.

Procedure on Indictment

THE Court of Criminal Appeal on 19th July gave its opinion on a point of practice of general interest to those concerned in indictable cases, and of special importance to clerks of assize and of the peace and their deputies. Where an indictment contains several counts, every count is equivalent to a separate indictment, in the sense that the prisoner may be tried on one or all the counts and, at the conclusion of the trial, separate verdicts on each count have to be taken from the jury. But what of the parallel procedure at the beginning, when the prisoner is arraigned and is called upon to plead to the indictment? Must the counts be put separately to him at that stage? Practice has hitherto varied from court to court, but some clerks, at least where the prisoner is defended, have read the whole indictment and then called for the plea or pleas. In the opinion of the Court of Criminal Appeal the right practice is to put each count separately, and the prisoner should be asked to plead to each count as the count is read to him, so that there should be no doubt about which count he intends to plead to. Moreover, this should apply not only to counts of a different nature but also where there are alternative counts, for example, for stealing and receiving.

Breaking and Entry by a Trick

IN the same case (*R.* v. *Boyle*) the court had to consider an unusual instance of a concept more familiar in some other branches of the criminal law, the writing down of the face value of a person's action by reference to his obvious intention or, perhaps, to other surrounding circumstances, so that in the eyes of the law some necessary ingredient of a crime is supplied which *prima facie* would appear to be lacking in the particular case. Killing is not murder unless there be *prepense*, but this element of malice aforethought will be inferred if the killing occurs incidentally to the commission of some other violent felony. Again, larceny requires a taking without the owner's consent, but fraud vitiates consent. Hence the learning on what Stone describes as that "most bewildering subject," larceny by a trick. Constructive housebreaking is not entirely new to the law, but the recent case provided LORD GODDARD, C.J., with an opportunity to state its essential characteristics in terms of a modern contrast. If a man from the gas authority came to read the meter and stole while in the house there would be no breaking, even constructively, but merely larceny in a dwelling-house. But in *Boyle's* case the appellant called and told a householder quite untruthfully that he had been sent by the B.B.C. to locate wireless disturbances. She would not have let him in had she known the true facts, but she did, in fact, admit him, and he then stole her handbag while she had gone to fetch water. That was, in the opinion of the court, a constructive breaking, as it must be taken that he went there with a felonious intent, and got into the house for the purpose of stealing.

Mock Auctions in Brighton

IN our imperfect society legislative reforms are often made piecemeal, but the pieces tackled separately are usually subdivisions of the subject in hand rather than reforms complete in themselves but confined to one part of the country. Generally speaking it is desirable that there should not be regional discrimination. There are, however, some matters capable of local control with regard to which a proposal of reform might well be tried out first in one district before its introduction on a wider scale is essayed. We suppose that potentially the readiest example is seen in the State public-houses of Carlisle, although in that case the success of the project has not proved, at all events, infectious. An experiment of a similarly local nature, in quite a different field of activity, seems likely to be made as a result of a clause in the Brighton Corporation Bill now before Parliament. The clause proposes that all premises used for sales by auction within the county borough should be registered by the corporation. Its object is to strike at mock auctions, described by counsel for the corporation as "really another form of confidence trick" and "an evil tending to bring our seaside towns into disrepute." "If," said counsel, "we are able to get rid of mock auctions there, other towns may follow suit, or public legislation might follow on these lines."

Brighter Law Reporting

THE brightening of sports column headlines in *The Times* on which we commented last week (*ante*, p. 499) in connection with Major G. E. TWINE's success at Bisley, has now, it seems, invaded their daily Law Report. On two successive days (22nd and 23rd July) captions heading reports of cases were almost Delphic in their subtlety. *Woollett* v. *Minister of Agriculture and Fisheries*, in which STABLE, J., upheld the subject's rights to a proper certificate by a properly appointed agricultural land tribunal where land is retained under s. 85 of the Agriculture Act, 1947, was announced, as it were, with a bugle note: "Certificate Not a Certificate; Tribunal Not a Tribunal." From those few triumphant words it was not difficult to discern where the sympathies of *The Times* lay in the dispute between the State and the individual. To adopt another simile, this was not the thunder of the old Thunderer, but a new kind of lightning. Then, the next day, in *R.* v. *Industrial Disputes Tribunal; ex parte American Express Company, Inc.*, the Divisional Court decided that a dispute between the National Union of Bank Employees and the American Express Company was a "dispute" within art. 12 (1) of the Industrial Disputes Order, 1951. *The Times* headline was "Dispute Whether There Is a Dispute." There is a suspicion here of sarcasm, as if the thunder had turned the milk sour.

BOUNDARIES

THE short note on *Minter* v. *Wheeler*, at para. 1942 of the Current Law Year Book, 1953, serves as a reminder of the frequency with which troublesome questions arise in practice over the boundaries of a man's land, and who owns the boundary marks, if any. In *Minter* v. *Wheeler* the defendant held a conveyance of certain riverside land, including land to the low water mark. He was also the registered owner of the land, but the plan attached to the certificate only showed the boundary as corresponding to the high water mark. The defendant had agreed to let the land to the plaintiff. A dispute having arisen, presumably over the strip of land between the high and low water marks, the plaintiff claimed damages for breach of contract. It was held that the agreement had only related to the registered land, and that the plaintiff had not appreciated that there was any difference between the land as shown on the conveyance and the land as shown on the plan.

Many of the everyday disputes as to boundaries are often quite trivial, involving, for example, only a small strip of land, or the ownership of the hedge or fence at the bottom of a suburban garden. The difficulties met with in resolving such disputes are not lessened through the majority of such cases being entirely dependent upon questions of fact, and although a client may feel dissatisfied with the position he may not be able to produce the necessary evidence to substantiate his case in the event of litigation taking place.

When a dispute arises and reference is made to the deeds, it may be found that the boundary has not been defined at all, or where it has been defined, although the definition seems adequate on paper its deficiencies become apparent when physically checked against the land. There may be a plan, but although it may show the boundaries it may give no indication as to who owns any fences or hedges that may be there. Even the Land Registry plans do not always help on the question of ownership of boundary marks, although, as the plans are based on the Ordnance Survey, the boundary will probably have been taken through the centre of a mark, such as a hedge, when the original Ordnance Survey sheet was prepared.

In non-registered conveyancing, the plan may be a tracing or copy of some earlier plan, and, with the best will in the world, if the copy is too many times removed from the original, omissions and inaccuracies will almost certainly have crept in over the years, quite apart from any changes in fact, such as the substitution of a fence for a hedge.

Such disputes can sometimes be resolved by the application of general principles of law, including certain presumptions as to boundaries. The matter is, however, essentially a question of fact and these presumptions can always be rebutted by evidence to the contrary.

THE CONVEYANCE

In the first place, reference should be made to the conveyance under which the land is held. In the conveyance, if the boundary is defined at all, it may be either by reference to a plan, or by words, or of course both may be used. If the boundary of a property is defined by words and also by reference to a plan the conveyance should be examined so as to see whether it clearly indicates which is to prevail in the event of a conflict. If, however, there are several inconsistent descriptions, it is a matter of construction of the deed, there being no general rule by which the court will decide which must prevail. In *Eastwood* v. *Ashton* [1915] A.C. 900 there was a conveyance by *A* to *E*. The property was described in four different ways, by the name of the premises, by the acreage, by the names of the occupiers, and by reference to a plan. On the plan a small strip was coloured that was not in fact *A's* property. It was held that as the plan was a clear delimitation of the land to be conveyed, it must prevail. On the other hand, in *Horne* v. *Struben* [1902] A.C. 454 the conveyance itself was detailed and accurate and conveyed the land " with boundaries as will further appear by the diagram framed by the surveyor." The diagram referred to land other than that conveyed. It was held that the diagram was repugnant to the terms of the grant and that the words in the conveyance must prevail.

PRESUMPTIONS

Where there is no mention of or adequate definition of boundaries in the title deeds the question will have to be determined as a matter of fact by reference to the land, and by the application of certain presumptions of law to the facts as found.

In *Noye* v. *Reed* (1827), 6 L.J. (o.s.) K.B. 5, it was held that where two plots of land are separated by a hedge and an artificial ditch, there is a presumption that the hedge and the ditch belong to the owner of the land on the same side of the ditch as that on which the hedge stands. The reason for this is that when digging his ditch the owner of the ditch will be presumed to have thrown the soil on to his own land and not on to that of his neighbour: the hedge being planted on top of the soil removed. But this is only a presumption, and can be displaced by evidence to the contrary, as in *Fisher* v. *Winch* [1939] 1 K.B. 666, where the conveyance was by reference to a plan taken from the Ordnance Survey map and evidence was called to show that, in preparing these maps, it was customary to take the boundary along the centre of the hedge. A similar result was reached at first instance in *Rouse* v. *Gravelworks, Ltd.* [1940] 1 K.B. 489 and was not disputed in the Court of Appeal.

On the other hand, if there is no ditch, and no evidence is called to show that one ever existed, there is no presumption of law that the owner of a hedge is entitled to the ownership of land to the extent of one ditch-width beyond the hedge (*Collis* v. *Amphlett* [1920] A.C. 271). If an enclosure map exists, it may be strong evidence in the event of a boundary dispute against the owner of the land comprised in the award (*Frost* v. *Richardson* (1910), 103 L.T. 22).

If there is a fence any posts and arris rails are usually to be found on the side of the owner of the fence, but whether this general custom amounts to a rebuttable presumption of law has apparently still to be tested in the courts.

ACTS OF OWNERSHIP

How far will acts of ownership over a disputed hedge or ditch tend to rebut the presumption that the hedge or ditch belongs to the owner of the land on which the hedge stands? This, again, is largely a question of fact. In *Marshall* v. *Taylor* [1895] 1 Ch. 641 the defendant had, for some twenty years, treated the ditch as part of his garden. He had built flower beds and a chicken house over it. He was held to have acquired a " squatter's title."

On the other hand, in *Henniker* v. *Howard* (1904), 90 L.T. 157, acts such as trimming the hedge and cleaning the ditch for nearly fifty years did not rebut the presumption, for there was no evidence that the true owner had any knowledge of the adverse acts of ownership. A similar result was reached in *Earl Craven* v. *Pridmore* (1902), 18 T.L.R. 282,

where the acts of ownership were known to the plaintiff's tenant but not to the plaintiff himself.

It seems, therefore, that if some evidence can be obtained that the owner of the freehold had knowledge of the adverse acts of ownership it will be of greater value than proof of acts of husbandry, even though the latter may extend back for a considerable time.

Conclusion

Although it is easy to preach a counsel of perfection, there are, nevertheless, certain precautions that should at least be considered by a purchaser before land is conveyed to him.

A physical inspection of the land can be made (preferably by a surveyor) and the proposed parcels clause in the conveyance checked against the facts on the ground. In particular, boundaries should be verified and enquiries made as to claims of ownership over walls, hedges and fences. If the boundary mark is shown as, say, a fence, and a hedge is found on inspection, enquiries should be made as to who planted the hedge and whether it was planted to one side of, or on the line of, the old fence.

In practice, although a prudent man will have the structure of his proposed house surveyed before contracting to buy, he would consider it an unnecessary expense to employ a surveyor to check the parcels clause in the conveyance. In such cases it may be possible for the client himself to check the boundaries.

Sometimes appropriate requisitions as to the boundary marks and their ownership may be addressed to the vendor, but it must not be forgotten that the onus is upon the purchaser to satisfy himself as to the extent and identity of the property he is buying.

H. N. B.

OCCUPATIONAL HAZARDS—II

The purpose of last week's article on this subject was to try to demonstrate that, in spite of the heavy duties imposed on employers by common law and statute, there is still a residuum within which accidents may happen without any blame falling on anyone. The purpose of this article is to show that, even though there may appear to be a breach of some statutory duty, there are circumstances in which the effects of that breach may be whittled away; and, secondly, that often what at first sight appears to be a breach on a true construction of the statute is not a breach at all. First, there must be considered the question of contributory negligence. In *Smith* v. *Chesterfield & District Co-operative Society, Ltd.* [1953] 1 W.L.R. 370; 97 Sol. J. 132, the plaintiff was employed on a machine which rolled out puff pastry and which was provided with a guard which came to within three inches of the bed of the machine. The plaintiff had apparently been warned against putting her hand under the guard but nevertheless did so and was injured. Oliver, J., held that the guard was a sufficient protection against anything except a deliberate act and therefore the machine was "securely fenced" under the Factories Act, 1937, s. 14 (1). The Court of Appeal disagreed on the ground that it is recognised that people in factories are not always careful but are often thoughtless and sometimes do things deliberately which they ought not to do. Thus, fencing is intended to protect the careless and the ignorant as well as the careful and the well instructed. Since it was possible for the plaintiff, without breaking the guard, to get her hand in contact with the rollers, there was a breach. That, however, was not the end of the matter. The Court of Appeal did not doubt that the plaintiff was guilty of contributory negligence; she did a deliberate act against which she had been warned and which she ought to have known was highly dangerous. While the guard was not adequate, the plaintiff was guilty of folly and was disobedient, and for this reason the Court of Appeal awarded her only 40 per cent. of the damages to which she would have been entitled if her employers had been found fully liable. The plaintiff in this case was quite young, and it is not difficult to visualise circumstances where employers might be found guilty of a breach of the statute and the employee guilty of such a degree of contributory negligence as to wipe out the civil liability of the employers. It is not easy to visualise cases of contributory negligence under s. 22, but under s. 25 they are of common occurrence.

It is now necessary to consider a number of cases where, at first sight, there appears to have been a breach, but where the courts have construed the section and held that there was not. The best illustrations of this aspect of the problem arise under s. 25 (1), which deals, *inter alia*, with the construction and maintenance of floors. In *Latimer* v. *A.E.C., Ltd.* [1953] A.C. 643; 97 Sol. J. 486, a factory had been flooded with surface water owing to an exceptionally heavy storm of rain, and the water had become mixed with an oily liquid, with the result that when the water drained away it left an oily film on the surface of the floor. The floor itself was level and structurally sound so that the question which arose under s. 25 (1) was whether it was "properly maintained." Section 152 (1) of the Act defines "maintained" as meaning "maintained in an efficient state, in efficient working order, and in good repair." In answer to the question whether "an efficient state" meant that the floor had at all times to be kept in perfect condition and free from casual and temporary obstructions, the House of Lords was unanimous. Lord Porter said: ". . . I cannot think the provision was meant to, or does, apply to a transient and exceptional condition." Lord Reid: "It seems to me that the first question is whether the film of oil can be regarded as part of the floor. There may be difficult cases where something has been put on a floor without being incorporated with it and where it could be regarded as part of the floor, but this is not one of those cases. The oil was on the floor casually and temporarily, and seems to me to have been no more part of the floor than a banana skin dropped by a passer-by . . . keeping the surface of a floor free from dangerous material does not appear to me to come within the scope of maintaining the floor." Lord Asquith of Bishopstone: "You must maintain the floor, but it does not cease to be maintained because cumbered with things resting on it." Breach of statutory duty did not of course conclude the matter, but their lordships had no difficulty in deciding that there was no negligence on the part of the employers.

It is thus clear that dangers arising from sudden storms must be accepted as part of the risks of the job, but obviously there comes a point when the presence of matter on the surface of the floor affects the state of the floor itself. As Lord Asquith of Bishopstone said: "Where, e.g., a floor has polish so rubbed into it as to become absorbed and incorporated in its structure, are we dealing with a floor *simpliciter* or a floor plus something superincumbent on it?" Naturally, the employers have a duty at common law to take all reasonable steps to clear away water, oil or anything else which may make working dangerous, and presumably to take proper precautions against dangers of flooding which are known to them.

Soon after the House of Lords decided *Latimer's* case, *Levesley* v. *Thomas Firth & John Brown, Ltd.* [1953] 1 W.L.R. 1206; 97 SOL. J. 606, came before the Court of Appeal. This case dealt not with s. 25 (1), which is expressed in absolute terms, but with s. 26 (1), which requires the employer to provide and maintain safe means of access, so far as is reasonably practicable, to every place at which any person has at any time to work. It is clear that while a passageway may be structurally sound, it may be so obstructed as not to be a safe means of access to work. The question for the Court of Appeal was whether any obstruction of the means of access is sufficient to constitute a breach of the section, or whether the same principle as that applied in *Latimer's* case ought to be applied to transient and exceptional obstructions. The facts in *Levesley's* case were that a space 15 feet 3 inches wide was marked out with white lines as a way along which employees might pass to and from their work. On the occasion in question the plaintiff found the way blocked by a lorry and while engaged in passing round the lorry he tripped over a piece of steel packing, which was about 2 inches high and projected 3 or 4 inches into the marked way, and broke his leg.

Cassels, J., held that there was a breach of s. 26 (1), but the Court of Appeal reversed his decision. Denning, L.J., said: "Once a safe means of access is provided, such as a passage or gangway, the occupier is not responsible for every temporary obstruction (such as a patch of oil or slipperiness) which may, through accident or mischance, occur in it. If he has an efficient system to keep it clean and free from obstruction, that is all that can reasonably be demanded of him. It is, indeed, all that is reasonably practicable. So regarded, s. 26 (1) adds very little to the common-law obligation between employers and workmen, and it has been so said on several occasions in this court." The Court of Appeal had come to a similar conclusion a short time previously in *Woods* v. *W. H. Rhodes and Son, Ltd., and Others* [1953] 1 W.L.R. 1072; 97 SOL. J. 538, in which the Docks Regulations, 1934, were in issue. The point at issue was the same and it was held that the construction of the word "maintained" in the regulations is confined to the actual working place itself and does not extend to any article that may be brought on to the floor of the working place.

It is hardly necessary to cite any more authority, but merely to bring the record up to date reference may be made to *Thomas* v. *Bristol Aeroplane Co., Ltd.* [1954] 1 W.L.R. 694; *ante*, p. 302. The plaintiff was on his way to work at the entrance to the defendants' factory at 7 a.m. A snow shower had fallen at 6.45 a.m., the snow had immediately frozen and the surface had become icy. The plaintiff slipped and fell. The defendants' maintenance men did not come on duty until 7.30 a.m. Neither Lynskey, J., nor the Court of Appeal appeared to have much difficulty in deciding that "the risks which resulted that morning at that time from the vagaries of the weather were no more than the risks which form a part of the ordinary incidents of daily life to which all are subject."

It has not been possible in these two articles to do more than indicate certain tendencies in one or two branches of the law of employers' liability, even though those branches may be among the more important. Those who are actively concerned with cases of this kind are often impressed with the hardship which is caused to injured workmen or to the dependants of deceased workmen who have not been at fault, but who have not been able to prove any breach of duty under statute or at common law on the part of their employers. There have been many cases, particularly where death has resulted, when judges have openly expressed their regret at being unable to find for the plaintiff. It is true that under the National Insurance (Industrial Injuries) Acts there are benefits which do not depend on fault; in the mining industry, which is particularly vulnerable to accidents without fault, there is a scheme by which these benefits are increased. The upshot is, however, that there may be two widows living side by side whose husbands have been killed at work without any fault on their part. One widow may have been able to prove negligence or breach of statutory duty and to recover substantial damages for herself and her children; the other may have failed and thus, possibly, be condemned to a lifetime of poverty. To amend the Industrial Injuries Scheme so as to increase benefits would require substantially increased contributions, and already there is enough complaint about the size of the weekly contribution. It seems that the insurance industry (if they do not object to being so termed) have not sufficiently explored the possibility of selling accident insurance either individually or collectively through the trade unions to cover contingencies such as have been described in some of the cases mentioned in these two articles. It is true, of course, that the prospects of being killed or injured are not confined to the factory. On the roads there are plenty of accidents without fault. It will be remembered that some time ago Finnemore, J., suggested some sort of fund to compensate children injured in road accidents where no person was to blame. There is reason to believe that the problem is wider than this.

P.A. J.

A Conveyancer's Diary

OWNERSHIP OF HIGHWAYS

ONE of the earlier lessons in the law of real property teaches that the dedication of a piece of land as a highway has by itself no effect on the ownership of the land. The public thereby acquires certain rights and liabilities, the rights being a good deal more limited than laymen with their talk of the Queen's subjects and the Queen's highway realise, and the liabilities being of little account now that the repair of highways is regulated by statute; but subject to those rights and liabilities the land remains vested where it was. But for the purpose of enabling it to discharge its functions as a highway authority various statutes have conferred on the authority some right of property, or, as Lord Macnaghten with his habitual caution in these matters suggested in *Mayor, etc., of Tunbridge Wells* v. *Baird* [1896] A.C. 434, at p. 442, a statutory right in the nature of a right of property, in the roadway. It was the characteristics of this right and its relation to the property legislation of 1925 that were the subject of investigation in the recent decision of the Court of Appeal in *Tithe Redemption Commission* v. *Runcorn Urban District Council* [1954] 2 W.L.R. 518; *ante*, p. 212.

The Commission claimed from the council a part of an annuity which had been apportioned as between certain highways in the area of the respondent council and other land which was in the undisputed ownership of some other person. The liability to pay a part of an apportioned tithe redemption annuity is placed by s. 17 of the Tithe Act, 1936, on the person who is deemed by that section to be the owner of the land, who is thereby defined, in the ordinary case, to

be the "estate owner in respect of the fee simple thereof." The expression "estate owner" has the same meaning in this section as it has in the Law of Property Act, 1925, where it is defined (s. 205 (1) (v)) as meaning the owner of a legal estate. The question in the present case was, therefore, whether the council was the estate owner of the highways in question. These highways had become vested in the council by virtue of s. 29 of the Local Government Act, 1929, which provides that the roads there mentioned and the materials thereof shall vest in the appropriate local authority.

This formula as to vesting is one which has appeared in many statutes dealing with highways, commencing (I think) with the Public Health Act, 1848. After mentioning this circumstance and also pointing out that in the present case the relevant statute had been passed and come into operation after the coming into effect of the 1925 property legislation, by reference to which the test of ownership had to be determined, the Master of the Rolls, who delivered the leading judgment in the Court of Appeal, posed the problem before the court in the following way: "*Prima facie*, therefore, Parliament in 1929, as regards the vesting of highways, must have intended the same effect as had been produced by the earlier and similar legislation. I have thought it desirable to state that apparently obvious fact, because one of the peculiarities of this case is that, on one view of the matter, the situation of highway authorities *vis-à-vis* tithe rent-charge annuities may, as the result of the property legislation of 1925, be different according as the vesting took place before or after 1st January, 1926. If that view were right, the result would be no doubt surprising; but, if it is so, it has revealed a curious and no doubt unpremeditated by-product of the 1925 property legislation." That being so, it was desirable, the Master of the Rolls went on to say, first to inquire what was the effect in law of the vesting by virtue of such a formula as was found in the Local Government Act, 1929, according to the old land law before the legislation of 1925.

It was argued on behalf of the council that that effect was not to confer upon the highway authority a fee simple or other legal estate in the highway of one of the kinds well recognised by the old land law, but rather to vest in it a special and peculiar species of proprietorship having, doubtless, attributes common to the old estates in land, but not being in truth such an estate. The right which, it was suggested, was conferred upon the authority was a special right to the surface of the highway and an undefined area below and above the surface, with all such ancillary rights and powers as were requisite for the authority in the performance of its statutory duties, but no more. This view was not accepted by the Court of Appeal. A number of authorities were referred to on this question, and perhaps the clearest and most helpful is a passage from the judgment of James, L.J., in *Rolls* v. *Vestry of St. George the Martyr, Southwark* (1880), 14 Ch. D. 785, the gist of which was this. The proper construction of the enactment that streets being highways shall vest was that streets, if and so long as they were highways, should be vested. There were no words of inheritance in the Act, and nothing to say whether the streets were to vest in fee simple or for any limited estate, and they were given to and vested in the local authority for the purposes of the Act and during the time for which those purposes required them to be held, and no longer. Words of divesting or defeasance were not required, because the interest of the local authority was exactly like a limited estate. The learned lord justice then instanced the case of an estate given to a woman during widowhood. In such a case words of defeasance were not required to divest the estate on remarriage because the estate had ceased when the limit originally put upon it was arrived at; and so in the case of the authority, when the street ceased to be a highway it ceased to be vested because the period for which it was to be vested in the authority had come to an end.

In the judgment of the Court of Appeal in the present case the effect of this and other authorities on this question (including the House of Lords' decision in *Baird's* case which I have already mentioned) was that a highway authority which had a highway vested in it by statute before 1926 acquired therein a determinable fee simple, a species of estate recognised by the old land law. But in the present case the vesting did not occur till 1929, and the question was whether such a thing as a determinable fee simple of the kind which, under the old law, became vested in a highway authority was capable of existing under the 1925 legislation; for, if not, the old authorities were inapplicable and the council could not be an estate owner of the highways in question.

The only legal estates which can now exist in land are an estate in fee simple absolute in possession and a term of years absolute (Law of Property Act, 1925, s. 1 (1)). A determinable fee simple is not a fee simple absolute, and if the Act stopped there the question would inevitably have been answered in favour of the council. But s. 7 (1) of this Act provides that a fee simple which, by virtue of the Lands Clauses Acts, the School Sites Acts, or any similar statute, is liable to be divested, is for the purposes of the Act a fee simple absolute and remains liable to be divested as if the Act had not been passed. It was argued that this provision did not assist the Commission because, on its language, it applied only to land liable to be divested by virtue of certain enactments, and in the case of highways vested in a local authority under such enactments as the Local Government Act, 1929, (*a*) there is no divesting if the land ceases to be required as a highway because the interest of the local authority in the highway (whatever it is) is an interest persisting only until the occurrence of such cesser, and on such cesser simply determines, or alternatively (*b*) if there is a divesting, it is not a divesting by virtue of a particular statute of the specified kind, but by the operation of the general law. These are forceful arguments, and it may be that they will prevail in another place; but the decision of the Court of Appeal was based on the broad similarity which, in the judgment of this court, exists between the case which arises under such enactments as the School Sites Act, 1841, under which there is a reverter to the grantor if the land ceases to be used for the purpose for which it was granted, and the case of a highway vested by statute in a local authority. In the latter case, on the land ceasing to be required as or for a highway, the owner has a right to have it back. On this view of the respective positions under such enactments as the School Sites Acts on the one hand and the legislation vesting highways in local authorities on the other, the Local Government Act, 1929, was a similar statute to such statutes as the School Sites Acts for the purposes of s. 7 (1) of the Law of Property Act, 1925, with the result that the respondent council was held to be an estate owner of the highways and so liable to pay a proportionate part of the tithe redemption annuity under the Tithe Act, 1936.

In the end, therefore, the Master of the Rolls' suggestion that one effect of the property legislation of 1925 might have been to produce a distinction between the kind of interest in the land which a statutory vesting of a highway confers upon a highway authority according as the vesting took place before

or after the coming into operation of that legislation came to nothing; such a distinction could only have become real if the argument of the respondent council had prevailed. But although this is a very interesting speculation to the real property lawyer and one of which more may be heard in the future, the real interest of the present case for the average practitioner lies outside the dispute about the liability to discharge a tithe redemption annuity which gave rise to it. This is the first case in which the vesting provisions relating to highways have been thoroughly examined since the large volume of legislation on local government matters which was so marked a feature of the third and fourth decades of this century, and it shows that despite all the statutory interference with the rights of property owners which so much of that legislation involved, the essentials of the law relating to the property in land on which highways are constructed has not been changed. Subject to the limited right of property or, to revert to Lord Macnaghten's expression, right in the nature of a right of property, which the local highway authority possesses in the surface of the highway and an undefined part of the soil beneath, the adjoining landowner will still in most cases be found to be the freeholder of the land over which the highway passes, and as such could to some extent control its use. The public right of passage he cannot, of course, interfere with; but parking vehicles is not passage. Of course, the soil may have passed away from the adjoining owner in circumstances different from those considered in *Tithe Redemption Commission* v. *Runcorn Urban District Council*; cases on this kind of problem notoriously depend on their own facts. But if not, the frontager who has difficulty in obtaining access to his premises through a clutter of other peoples' motor vehicles may perhaps have a remedy which up till now has escaped his attention.

"A B C"

Landlord and Tenant Notebook

PECUNIARY RENT

ALL text-book writers faithfully refer to the passage in Coke's Institutes (I, 142a), in which he tells us that rent need not be a sum of money but may consist of other matters such as spurs, capons, horses and corn, or of services. Before the days of rent control we were apt to consider the information interesting but the interest purely academic; I think that the last case of which rent payable in services was a feature was *Marlborough (Duke)* v. *Osborn* (1864), 5 B. & S. 67, which turned on the construction of an agreement obliging a tenant to work "at the rate of one day's team work with two horses and one proper person for every £50 of rent when required, except at hay and corn harvest, without being paid for the same": one point, whether this included drawing coals to Blenheim Palace, was decided in the plaintiff's favour; another, whether the tenant had to bring his own cart, in the defendant's. But since rent restriction and its security of tenure corollary have been part of the law, a good many of us have found that though rent is usually payable in money, such a question as whether an occupier of a dwelling-house, he being employed and the house owned by the same person, is a tenant or not and, if so, whether he is a protected tenant, has often demanded careful thought; and one of the points calling for consideration has usually been whether the value of the use of the house, taken into consideration when the agreement was or agreements were made, can be "rent." Until the decision in *Montagu* v. *Browning* [1954] 1 W.L.R. 1039 (C.A.); *ante*, p. 492, it was indeed correct to regard the judgments of Salter and Shearman, JJ., in *Hornsby* v. *Maynard* [1925] 1 K.B. 514, as conclusive on the subject. The first-mentioned said, in the course of his judgment: "At common law the term 'rent' was not restricted to pecuniary rent. Tenancies under which rent was payable by way of services were formerly very common, and such tenancies are still to be met with. In this Act, however, having regard to its own provisions and to the authorities decided upon it to which our attention has been drawn, I think that the term 'rent' applies only to pecuniary rent."

In *Montagu* v. *Browning* the county court judge reluctantly found himself bound to apply the above to the following facts: In 1941 the plaintiffs, trustees of a synagogue, engaged the first defendant as its keeper, the value of his services being estimated at £40 a year; and at the same time let him a house (the rateable value of which brought it within the Rent, etc., Acts) of which the rental value was estimated to be £66 a year. He accordingly paid them 10s. every week, and this continued after his wife, the second defendant, had taken over his functions as keeper of the synagogue. In 1946 the plaintiffs resolved to increase the remuneration payable to the keeper for cleaning, etc., by an amount corresponding to 10s. a week, and the minister consequently told the defendant that he would not have to pay the 10s. any more, to which he replied "Thank you." In 1953 the plaintiffs determined the contract of employment and, after an interval, gave the first defendant notice to quit. In the action for possession which ensued, they admitted that the first defendant had been a protected tenant until the change made in 1946, and relied on *Hornsby* v. *Maynard* as showing that after then the common law governed the relationship.

It was not suggested that the original tenancy still existed because no order had been made for possession and possession had not been given: *Foster* v. *Robinson* [1951] 1 K.B. 149 (C.A.) would have afforded an answer to the contention that Greene, M.R.'s pronouncement on the perdurability of statutory tenancies, in his judgment in *Brown* v. *Draper* [1944] K.B. 309 (C.A.), must apply to any protected tenancy. But, the county court judge having indicated that the case was a suitable one for an appeal (and *Hornsby* v. *Maynard* was a decision of a Divisional Court, before appeals from county courts went to the Court of Appeal direct), the defendants took the suggested step, and were successful.

Singleton, L.J., appears to have been inclined to distinguish *Hornsby* v. *Maynard* rather than to criticise it; the facts of the older decision were indeed very different, the question in issue being whether rent in excess of the permitted amount was being charged by reason of the fact that a tenant had agreed to allow his landlady the use of two rooms, this concession not having been a feature of the tenancy by which the standard rent had been determined. Denning, L.J., was rather more forthright, and his judgment can be said to express disapproval of those delivered in *Hornsby* v. *Maynard*.

But it is important to observe that a point stressed by the court in *Montagu* v. *Browning* was that the parties had themselves quantified the value of the use of the house in terms of money. In a good many cases in which practitioners are consulted, all that one gets is that the fact that the alleged tenant was to have the use of accommodation was or must have been taken into account in the negotiations by which his remuneration was determined. Where a minimum wage is

fixed by law, there may sometimes be ground for suggesting that the parties had some figure in mind, or at all events at the backs of their respective minds; even so, it would be difficult to apply *Montagu* v. *Browning* in the absence of such a quantification as was referred to by Denning, L.J.

Coke's spurs, capons, horses and corn, as well as the services he mentions, were duly introduced into the case; but the court declined to express any opinion on the applicability of the Rent Acts to a tenancy reserving a rent payable in kind. Indeed, the difficulties hinted at by Salter, J., in *Hornsby* v. *Maynard*, when he said that the Act, "having regard to its provisions," applied only to pecuniary rent, would be likely to prove very real when there was no quantification in money, as is perhaps more likely to be the position when rent is payable in kind. One may assume that such a rent would not be weekly rent, and consequently the provisions of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1938, s. 6, obliging the landlord to provide a rent book, would cause no trouble; also, such increases in rent as are permitted in the case of "new control"—improvements and increased rates—could be notified in the form required by the Rent Restriction Rules, 1940, the standard rent being expressed in capons, etc., the increases in cash. But the "old control" increases permitted by paras. (*c*) and (*d*) of s. 2 (1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, being 15 per cent. of the net rent and a further proportion, not exceeding 25 per cent. of that rent in respect of liability for repairs, would defy calculation, especially when the net rent differed from the standard rent! R. B.

HERE AND THERE

INDECISIVE BATTLE

THE battle of Crichel Down has been fought out. What at one time showed signs of being a brisk skirmish turned into a major engagement, costing one distinguished casualty besides those of lesser note. It is rather like one of those early battles in the great English Civil War (its very name sounds as if it came out of Clarendon) when each side might claim an advantage according to the way you looked at the fight, but neither could boast decision and a victory. Those were the days before Marston Moor and Naseby finally determined the shape of things to come. So the battle of Crichel Down marks rather the start of a campaign than the end. Wars come when an ancient balance has been disturbed and the war of which it marks the beginning (unless a patched-up truce delays the further hostilities) springs from the disturbance of the old balance between law-making, judging and administration, and finally it may well be known as the War of Public Control. Or perhaps it may be called the War of Private Property—not that sort of property which becomes so private in the hands of a few rich men that nobody else gets a look in, but the sort of private property that means that as many men as possible are rooted in some steadfast piece of earth from which naked power cannot eject them as a matter of course, or almost as a matter of course, when the administration has decided that the site is wanted for an airport or a reservoir or a bombing range or a by-pass road. The English, at any rate, have always had a strong distrust of professionalism intruding into private affairs and all their public institutions have developed in an atmosphere of the semi-official, very notably the Inns of Court and The Law Society. The jury of twelve men chosen haphazard was, and to some extent still is, a barrier to the professionalism of the lawyers. To speak of a professional politician is still little short of a term of abuse. The professional fighting man has been confined within the strictest limits. The traditional rôle of the public administrator similarly remained circumscribed within the limits of the maintenance of public order, the external defence of the realm, the conduct of foreign policy and the collection of taxes.

PROFESSIONAL ADMINISTRATOR RAMPANT

Now the professional administrator, like every specialist, always feels in his bones that he knows better than the hazy, mazy, muddle-headed, indeterminate public, that it is absurd that his fine sweeping impersonal plan should be constantly hampered by the trip-wires of the trivial absurdities of human personalities. Well, the circumstances of our time have played into the hands of the administrator. The enormous complexity of the modern State, the indefinite extension of governmental activities, combining the functions of Divine Providence and the rôle of Father Christmas, has extended administrative control, both in law making and in judging, to every feature of private life. Parliament, semi-professional part-time Parliament, can often only sketch the general outlines of the laws that are to govern us, leaving to anonymous officials the powers to fill in the details at their discretion or their indiscretion, and since the judges of England cannot watch over every strand of the enormous spider's web that now covers the whole country, officials, acting through innumerable boards, tribunals and commissions, have become more and more the judges in their own cause: Crichel Down marks the point at which the ordinary man is beginning, by actual experience, to understand the point of Blackstone's words written almost two centuries ago: "When the right of making and enforcing law is vested in the same man or one and the same body of men, there can be no public liberty." The situation becomes even more confusing for the ordinary man attempting to protect himself and his property against interference by officials when the sub-division and departmentalisation of the administrative body, the pattern of anonymous government, is an ever-changing kaleidoscope of personal rivalries or alliances, power politics and empire building. Thus in the battle of Crichel Down there were ranged under the banner of public control the Ministries of Air and Agriculture, the Commissioners of Crown Lands, the Agricultural Lands Commission, the Lands Service and a crowd of squires and camp followers in the guise of Crown Receivers, Provincial Land Commissioners and Ministry Liaison Officers.

BRIDLE FOR BUREAUCRATS

ALL this would be quite alarming enough, even if there were in the dealings of these bodies and individuals no arrogance, no disingenuousness, no spite towards members of the public who questioned their schemes. But the divided counsel within the administrators themselves does not even make for good dictatorship. The firm persistent force drawing the facts of the Crichel Down affair out of the recesses of official secretiveness into the light of a public inquiry has much in common with the Archer-Shee case, when it was the Admiralty that was fighting its obstructive rearguard action, and since then the hands of the officials have been strengthened beyond the power of measurement or reckoning. Twenty-five years ago, it used to be something of a boast with constitutional lawyers that in this happy isle, unlike miserable Continental countries, there was no *droit administratif*,

no special law for officials different from the law for the citizen. But modern legislation has changed all that. Administrative law is now an established fact but it lives in a jungle beyond the rule of law. The complexities of the modern State cannot all be simplified out of existence, nor can it withdraw from all its extended responsibilities, but in order that the citizen may be given some confidence in its operations, its tribunals should be rendered impartial by independence of the officials whose causes they judge. There should be no possibility of a Ministry choosing its judge in order to get a particular desired result. The proceedings must be known and open both to the public and the parties. Above all there must be some judicial body, like the Conseil d'Etat in France (a sort of Judicial Committee of the Privy Council) which is organised to control official action and bring it within the rule of law. The alternative, as we are seeing, is the law of the jungle.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

The Right to Assisted Appeal

Sir,—Your contributor makes the point that the tribunal which decides whether legal aid is to be granted for an appeal against the decision of a lower court should be of standing equal to or higher than the judge appealed against. His solution appears to be a committee of judges in the place of the area committees under the legal aid scheme.

In principle, it is obviously right that only the court itself should have authority to bar a litigant's access to the court. In practice, would not the situation be met if a litigant requiring legal aid had to obtain the leave of the court against which he is appealing, or failing that, the appeal court, as one does in the case of an appeal to the House of Lords?

London, W.C.2. ROBERT EGERTON.

TALKING "SHOP"

WEDNESDAY, 7TH *July*, 1954

Holiday literature? In the six-star hotel there is always the telephone-book. In the fifth-rate boarding-house and as a rule upon the shelves of the sitting-room may be found those hideous volumes which generations of summer visitors have shudderingly replaced: cupidity-proof literature. By and large, the quantity, if not the quality, of available reading-matter varies in inverse proportion to the size of the bill. Where there is an aspidistra I find that I can usually count upon a few copies of a certain popular housewife's journal, "Motley's Dutch Republic," several volumes of late nineteenth century sermons and "Little Women." This is better than nothing; and occasionally for good measure one may come across a really practical work—say, on saddlery or starfish.

Those who prefer to insure themselves against the vagaries of the English climate and the literature of English hostelries will put a few books in with the bathing costumes or fishing reels. Then the question arises, what books? Personally, I do not object to a faint—a very faint—flavour of "shop," any more than some people mind eating smoked salmon; it is a question of taste. And so, when a friend lent me a copy of Mr. Nevil Shute's "A Town Like Alice," to while away the long journey from Dublin to Euston, I was not displeased to find that Mr. Shute had adopted an elderly solicitor as the fictional narrator of his story. Not, as I say, displeased, but I must own a little apprehensive, for in my experience the average novelist has sadly little notion of what solicitors do, or how or by what mental processes they go about their business.

I need not have felt this momentary qualm, for Mr. Shute is much above the "average" novelist. A captious critic and close student of the law might conceivably question his fictional solicitor's wisdom in preparing a will for a domiciled Scotsman without any advice from over the border, but one must allow for whatever is the prose equivalent of poetic licence. In other respects it seemed to me that Mr. Shute did not put a foot wrong. The interview between the solicitor and his canny Scots client was a little masterpiece. How often has one "taken instructions" in the same fusty surroundings and put the same questions to forestall lapse and reminded one's client of his moral obligations to old servants! And when Mr. Shute's old Scot wished to postpone vesting of his niece's share his fictional solicitor writes of it as follows:—

> "From various past experiences I could not help agreeing with him that twenty-one was a bit young for a girl to have absolute control over a large sum of money, but forty seemed to me excessively old. I stated my own view that twenty-five would be a reasonable age, and very reluctantly he receded to thirty-five. I could not move him from that position, and as he was obviously tiring and growing irritable I accepted that as the maximum duration of our trust . . ."

Nor did the solicitor fail to include a wide discretionary power for the trustees "to realise capital for the benefit of the legatee in cases where they were satisfied that it would be genuinely for her advantage." There were many occasions for the exercise of that discretion, which one suspects was drawn to the very verge of the client's authority and a little beyond, but I will not spoil the novel for a prospective reader by disclosing what they were. Incidentally, the legatee took the unusual precaution of inquiring about the status of the solicitors concerned and was told that they were "as solid as the Bank of England and as sticky as treacle." Of course, it makes no matter how you describe your solicitor—dry as dust or sticky as treacle, the dehydrated and the viscous epithet will both serve—but I certainly thought that for such a sticky lot they took a tolerably broad view of that discretionary power. I respectfully congratulate them and Mr. Shute upon a nearly faultless performance.

THURSDAY, 8TH

There may be something after all in the theory that novelists are beginning to take a more charitable view of solicitors. I had no sooner finished Mr. Shute's novel than I picked up a book society's choice *sub nom.* "Like Men Betrayed," which had been left around the house by a week-end visitor from Germany. (Most inconsiderately he removed it from my grasp on leaving for Northolt, so I did not progress beyond p. 198.)

In this work the rather tiresome wife of the not so bad (up to p. 198) solicitor was singing the praises of a certain psychiatrist. By way of clinching the matter—for her husband, as usual, was being mulish—she observed that this psychiatrist had studied behaviour-patterns in Vienna for six years. But the husband, I am sorry to report, just went on being obtuse, obdurate and solicitorish. In brief, he had been studying behaviour-patterns in his office for thirty years and did not care to be lectured on the subject.

"ESCROW."

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

COURT OF APPEAL

FATAL ACCIDENTS ACTS: NEGLIGENCE: ASSESSMENT OF DAMAGES: PAYMENT UNDER GROUP ASSURANCE SCHEME

Bowskill v. Dawson and Another

National Provincial Bank, Ltd. *v.* Same

Somervell, Morris and Romer, L.JJ. 30th June, 1954

Appeal and cross-appeal from Devlin, J.

The Fatal Accidents (Damages) Act, 1908, provides by s. 1: "In assessing damages in any action . . . under the Fatal Accidents Act, 1846 . . . there shall not be taken into account any sum paid or payable on the death of the deceased under any contract of assurance . . ." *M* Ltd. set up a group life assurance policy scheme to provide "benefit relief or assistance for the widow child or children or other dependants" of male employees who should die whilst in employment with the company before attaining sixty-five. Under the terms of a deed of trust made between *M* Ltd. and certain trustees, the trustees agreed to carry into effect a policy of group life insurance to cover employees of *M* Ltd. and to pay the benefits covered by the scheme. "The scheme" was defined as "the trusts of this trust deed and the terms and provisions to be entered into and carried into effect . . . of a draft policy of group life insurance already settled and expressed to be made between" the *S* Life Assurance Co. of the one part and the trustees of the other part. *M* Ltd. financed the scheme and provided the amounts needed to pay the insurance premiums; and a group life assurance policy was duly issued, the trustees being the "person assured." The employees who were covered ("the lives assured") included one *D*, on whose death in a road accident the assurance company in accordance with the provisions of the policy paid a substantial sum of money to the trustees, who paid it to *D's* personal representatives. In assessing an award of damages to *D's* personal representatives in a counter-claim for negligence brought by them under the Fatal Accidents Acts, 1846 to 1908, the trial judge held in their favour, but took into account the moneys payable under the policy of assurance and reduced the award accordingly. The plaintiff appealed on the issue of negligence; the personal representatives cross-appealed on the question of damages.

MORRIS, L.J., said that the trust deed provided that the trustees were to hold the fund on trust "to secure to the estate of a member upon his death while in employment with the company . . . a sum assured calculated" in a certain manner. Under those circumstances the sum received by the personal representatives fell within the words of s. 1. The deceased had not been a party to the contract of assurance, but the section covered "any" contract, including those not made with the deceased. The facts of the present case made it distinguishable from *Smith* v. *British European Airways Corporation* [1951] 2 K.B. 893. It would, however, be right to reserve for future consideration the case where the deceased's estate received a sum paid under a contract of assurance not as of right, or pursuant to a trust.

ROMER, L.J., agreeing, said that the employees could be regarded as beneficiaries under an executed trust; they had more than mere expectancies dependent on the goodwill of the employers; they had rights which the courts would recognise and enforce. Section 1 accordingly applied. Cross-appeal allowed.

SOMERVELL, L.J., agreed.

APPEARANCES: *R. M. Everett*, Q.C., and *H. T. Evans* (*E. P. Rugg & Co.*); *W. A. Fearnley-Whittingstall*, Q.C., and *P. O'Connor* (*Wm. Easton & Sons*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 275

FATAL ACCIDENTS ACTS: DAMAGES: PAYMENT TO WIDOWER BY STEP-CHILDREN BENEFICIARIES

Peacock *v.* Amusement Equipment Co., Ltd.

Somervell, Birkett and Romer, L.JJ. 6th July, 1954

Appeal from Parker, J. ([1954] 1 W.L.R. 803; *ante*, p. 354).

As a result of an accident occurring while she was a passenger on a miniature railway owned by the defendants, the plaintiff's wife sustained injuries which caused her death. The defendants admitted liability and the plaintiff claimed damages as a dependant under the Fatal Accidents Acts, 1846 to 1908. The wife's estate consisted of a grocery shop with living accommodation attached, in which she and the plaintiff resided. By her will she left the property to a son and married daughter by a previous marriage, who after administration sold the business and voluntarily paid to the plaintiff a sum representing approximately one-third of the value of the estate. Parker, J., held that the gift by the step-children should be taken into account in assessing damages. The plaintiff appealed.

SOMERVELL, L.J., said that the question was, what were the circumstances in which the court would take into account an advantage not received as a legal right? The matter had been much considered in *Baker* v. *Dalgleish Steam Shipping Co., Ltd.* [1922] 1 K.B. 361, where the deceased had been a naval pensioner; such pensions could not be claimed as of right, but were invariably granted and maintained to persons of good character. A consideration of that case showed that it was important to consider the position at the time of the death, and to see whether there was at that time any probability or reasonable expectation of a benefit. Applying that test in the present case, there was no such expectation that the plaintiff would receive a benefit from the step-children. In *Redpath* v. *Belfast and County Down Railway* [1947] N.I. 167 it was held that one of the beneficiaries of a fund subscribed by the public for the benefit of the sufferers from a railway accident ought not to be interrogated as to the amount received from the fund, as to apply such a receipt in mitigation of damages would be to apply public charity to benefit the wrongdoer. In the present case, the payment was not made as a result of the death of the deceased. It would not have been made unless she had died, but it was the result of the step-children's consideration for the plaintiff, and it was not correct to say that it was made out of the widow's estate. The appeal should be allowed.

BIRKETT and ROMER, L.JJ., agreed. Appeal allowed.

APPEARANCES: *P. O'Connor* (*R. I. Lewis & Co.*); *M. Berryman*, Q.C., and *M. McGougan* (*Wm. Easton & Sons*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 288

BUILDING: SAFETY REGULATIONS: INSTALLATION OF PLANT AT ELECTRIC POWER STATION

Elms *v.* Foster Wheeler, Ltd.

Somervell, Birkett and Romer, L.JJ. 8th July, 1954

Appeal from Ormerod, J.

The Building (Safety, Health and Welfare) Regulations, 1948, provide by reg. 2: "These regulations shall apply to . . . the construction, structural alteration, repair or maintenance of a building . . . and to machinery or plant used in such operations." By reg. 30 (3): ". . . when work is done on or immediately above an open joisting through which a person is liable to fall a distance of more than 6 feet 6 inches, the joisting shall be securely covered over by temporary boards or other covering . . ." The defendants installed in a power station four large steam generating plants, consisting of boilers, compartments, cooling chambers and chutes, which when assembled reached a height of something over 100 feet. The installation necessitated the erection of steel stanchions, steel girders and joists for the purpose not only of supporting the various items of plant but also of providing galleries, stairs and floors to make the various portions of the plant accessible. The plaintiff, a steel erector employed by the defendants, was engaged with other workmen in getting a chute into position by means of chains and pulley tackle. The chute having fouled a cross joist, the plaintiff was directed by the foreman to "nip up and release it." He did so, using the 3-inch ridges on the chute as foot and hand holds in climbing and pressing his back against the wall of an economiser. When descending in this way, however, the plaintiff's foot slipped and he fell through open joists a considerable distance and sustained serious injury. He sued the defendants for damages, contending that they were in breach of reg. 30 (3) of the Building (Safety, Health and Welfare) Regulations, 1948, in failing to cover securely by temporary boards the joisting through which he fell and above which he had been working. Ormerod, J., held that the regulations applied, and that there had been a breach of reg. 30 (3). The defendants appealed.

SOMERVELL, L.J., said that the defendants' argument was based on a contrast between installation of plant and construction of a building; it was not based on the regulations or on any Act, and was not satisfactory because the installation of plant might involve the construction of a building. The judge below had decided, rightly, that the defendants were engaged on the construction of a building, and that the regulations applied. The plaintiff had been ordered to work immediately above open joisting, and had fallen more than 6 feet 6 inches; if there had been planks, as the regulation required, he would not have fallen so far. The defendants were therefore in breach of the regulations.

BIRKETT, L.J., agreed.

ROMER, L.J., agreeing, said that the question was whether at the time of the accident a building was being constructed, and whether the defendants were contributing to its construction, as it was plain that the words of reg. 2 covered "the construction of a building or any part thereof."

Appeal dismissed.

APPEARANCES: *R. M. Everett*, Q.C., and *T. Evans* (*E. P. Rugg and Co.*); *J. Thompson*, Q.C., and *R. G. Rees* (*W. H. Thompson*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1071

INCOME TAX: COMPUTATION OF EARNED INCOME RELIEF: DEDUCTION OF CHARGES ON INCOME

Lewin *v.* Aller (Inspector of Taxes)

Evershed, M.R., Jenkins and Hodson, L.JJ. 8th July, 1954

Appeal from Wynn Parry, J.

A chartered accountant, Owen Michael Lewin, appealed to the Commissioners for the General Purposes of Income Tax against an objection to the amount of his claim in respect of earned income allowance for the year ending 5th April, 1951. During that year the taxpayer was under obligation to pay charges which, in so far as they could not be set off against unearned income, totalled £118. His earned income during the relevant period was £1,516. He claimed that his earned income relief should be one-fifth of that amount, after deducting only £33, being the balance of mortgage and loan interest which he had paid less tax (which could not be set off against unearned income). On that basis his relief was £297. The inspector of taxes contended that all the charges had first to be deducted and on that basis the allowance would have been £280. The General Commissioners, and, on appeal, Wynn Parry, J., upheld the inspector's method, and the taxpayer appealed.

EVERSHED, M.R., said that although s. 15 (1) of the Finance Act, 1925, if read alone, appeared to give an unqualified right to relief on the whole of the earned income, when the subsection was read, as it had to be, with subs. (3), para. 17 of Sched. V to the Income Tax Act, 1918, was brought in and that made it clear (as Rowlatt, J., had held in *Adams* v. *Musker* (1930), 15 Tax Cas. 413), that s. 17 of the 1918 Act was intended to applyto s. 15 of the Finance Act, 1925, just as it undoubtedly had applied to qualify the right to relief formerly provided by s. 14 of the 1918 Act. The taxpayer, therefore, failed. His lordship also said that s. 40 (3) of the Finance Act, 1927, might provide an answer to Mr. Lewin's claim, but he did not decide that point.

JENKINS and HODSON, L.JJ., agreed.

Appeal dismissed.

APPEARANCES: *Roy Borneman*, Q.C., and *Montagu Temple* (*Solicitor of Inland Revenue*); the taxpayer appeared in person.

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 1063

CHANCERY DIVISION

INCOME TAX: DEDUCTIONS: COST OF RIGHT TO TAKE GRAVEL

Stow Bardolph Gravel Co., Ltd. *v.* Poole (Inspector of Taxes)

Harman, J. 21st May, 1954

Appeal by way of case stated from the Commissioners for the General Purposes of the Income Tax Acts for Freebridge Marshland in the County of Norfolk.

A company of sand and gravel merchants, in consideration of a payment of £2,000, acquired the benefit of a contract to take a deposit of sand and gravel. They later exercised an option contained in the contract, under which they acquired for £2,250 a right to take a further deposit of sand and gravel. The company did not treat the gravel in any way, but merely removed it from the soil and carted it away to be sold elsewhere. The company claimed that the sums of £2,000 and £2,250 were expended on the purchase of stock-in-trade and therefore admissible as deductions in the computation of their profits for the purpose of case 1 of Schedule D. The General Commissioners held that they were not allowable deductions. On appeal by the company from their decision, the Crown contended that the sums were not expended in the purchase of stock-in-trade, but were capital expenditure, being expenditure to acquire the right to go on the land and win the gravel.

HARMAN, J., said that there was no question of any process which had to be gone through in getting the gravel; it was merely dug up where it lay, put on a lorry and sold wherever it could be sold. It was argued that what was bought was a mere right to go on the land and win the gravel; but what had been bought in *Golden Horse Shoe (New), Ltd.* v. *Thurgood* [1934] 1 K.B. 548 was the licence to go on the land and take away "tailings" lying on the soil which contained a certain amount of gold, and it would be a distinction without a difference to suggest that, because nobody had ever before applied a rake to this gravel, it should be treated as capital, whereas if somebody had raked it into little heaps before the contract was made, then its purchase would have constituted a different form of adventure. The appellant company were sand and gravel merchants; and when they bought this sand and gravel they were buying stock-in-trade, and ought to be allowed to deduct its cost against the money they made by selling it. The appeal would be allowed with costs and the assessments remitted to the Commissioners. Appeal allowed.

APPEARANCES: *Hilary Magnus* (*Metcalfe, Copeman & Pettefar*); *Sir Lynn Ungoed-Thomas*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 1058

QUEEN'S BENCH DIVISION

HUSBAND AND WIFE: MARRIED WOMEN'S PROPERTY ACT, 1882: CLAIM FOR COSTS BY WIFE'S SOLICITORS AGAINST HUSBAND

J. N. Nabarro & Sons *v.* Kennedy

Stable, J. 6th May, 1954

Action.

Section 17 of the Married Women's Property Act, 1882, provides that in any question between husband and wife as to the title to or possession of property either party may apply to a judge of the High Court, who may make such order with respect to the property in dispute and as to the costs of and consequent on the application as he thinks fit. A husband was mainly successful in an application which he made under s. 17 of the Act of 1882 in respect of his title to certain moneys and property which his wife disputed. In an action by the wife's solicitors claiming from him the amount of their professional charges for resisting the application on their client's behalf, the husband pleaded that the common-law rule that in certain circumstances a wife was entitled to pledge her husband's credit for necessaries had no application to the costs of proceedings under s. 17 of the Married Women's Property Act, 1882.

STABLE, J., said that the burden of proof was on the plaintiffs to prove that the wife was under such financial stress that she was compelled to pledge her husband's credit in order to employ them; they had discharged that burden. The defendant's contention was that under the Act of 1882 any right to costs depended entirely on the award of the judge who decided the particular matter; that contention had much to commend it, if it could be supported by authority. The defendant relied on *Cale* v. *James* [1897] 1 Q.B. 418, a case heard in the Divisional Court concerning proceedings under the Summary Jurisdiction (Married Women) Act, 1895, which created a kind of poor persons' divorce court, and empowered the justices, *inter alia*, to make "a provision for payment by the applicant or the husband, or both of them, of . . . such reasonable costs of the parties as the court may think fit." A wife made an application on which the justices made no order on the merits or as to costs. The wife's solicitors sued the husband successfully for her costs in the county court. On appeal, it was held that all questions of costs should be dealt with by the justices, as it was not the intention of the Act that further proceedings regarding costs should be

taken in another court. It would be extending the principle of that case too far to apply it to proceedings under the Act of 1882. The Act of 1895 was intended for people in humble circumstances, whereas s. 17 of the Act of 1882 could be litigated between two millionaires, and its language meant merely that the court had complete jurisdiction of the costs *inter partes*. Judgment for the plaintiffs.

APPEARANCES: *N. Faulks* (*J. N. Nabarro & Sons*); *H. Phillimore*, Q.C., and *Harold Brown* (*Gordon, Dadds & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 296

COSTS: JOINT TORTFEASORS: WRITTEN OFFER OF CONTRIBUTION: NOTIONAL PAYMENT INTO COURT

Basted *v.* Cozens & Sutcliffe, Ltd., and Another

Devlin, J. 9th July, 1954

Action.

The plaintiff claimed damages against his employers, the first defendants, and the Port of London Authority, for personal injuries incurred during the course of employment which he alleged were due to the negligence of both defendants. Liability was contested. Devlin, J., gave judgment for the plaintiff, with costs, finding that both defendants were equally liable, and made an order that each of the defendants should pay 50 per cent. of the damages and 50 per cent. of the plaintiff's costs. Before the hearing of the action, on 4th June, 1954, the second defendants made a written offer to the first defendants to contribute to the extent of 50 per cent. to the damages to which the plaintiff might be entitled. On 11th June there was a direction under Ord. 30, r. 2 (2) (*j*), that the written offer of contribution might be treated, for the purposes of the first defendants' claim for contribution from the second defendants, as a notice of payment into court. On the question of costs, it was submitted on behalf of the second defendants that both defendants were each liable for 50 per cent. of the plaintiff's costs up to the date of the notional payment into court, but that thereafter the first defendants should pay any further costs that the second defendants might have to pay to the plaintiffs and also that they should pay the second defendants' costs of the proceedings.

DEVLIN, J., said that the offer that the Port of London Authority had made was to be treated as if it were equivalent to a payment into court, so that any person who disputed the payment into court or the offer as being sufficient must pay all the costs that had been incurred as a result of the continuance of such dispute which would otherwise be thrown away. The rule might be effective in a case where there were, for example, separate proceedings for contribution. The rule might be effective where a large part, or some appreciable part, of a single trial was taken up by a dispute as to whether the proper proportions, if there was any liability, were 50 per cent. or not; but in this case there had been no such dispute. Neither party at any time during the trial had made any submission on what the proper proportion of contribution should be. They were content to leave it, as, no doubt, it must be left, to the view that he took of the facts of the case. Accordingly, in the circumstances, no costs had been thrown away as the result of the employers having failed to agree the apportionment at 50 per cent., and they could not be made liable under the rule for costs which the second defendants had incurred in continuing (wrongly, as it turned out) to resist that they were liable at all. Accordingly, the order for apportionment of the costs as already made must stand. Order accordingly.

APPEARANCES: *D. P. Croom-Johnson* and *L. Joseph* (*W. H. Thompson*); *H. I. Nelson*, Q.C., and *B. Caulfield* (*Carpenters*); *B. E. Nield*, Q.C., and *S. O. Olson* (*G. J. D. Tull*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1069

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Gas and Electricity (Borrowing Powers) Bill [H.C.] [19th July.

Isle of Man (Customs) Bill [H.C.] [21st July.

Read Second Time :—

Finance Bill [H.C.] [21st July.

Read Third Time :—

Baking Industry (Hours of Work) Bill [H.C.] [21st July.

Birkenhead Corporation Bill [H.C.] [21st July.

British Transport Commission Order Confirmation Bill [H.C.] [20th July.

Hire-Purchase Bill [H.C.] [19th July.

Landlord and Tenant Bill [H.C.] [21st July.

Long Leases (Scotland) Bill [H.C.] [20th July.

Pharmacy Bill [H.L.] [19th July.

Post Office Savings Bank Bill [H.L.] [22nd July.

Slaughter of Animals (Amendment) Bill [H.C.] [21st July.

Television Bill [H.C.] [22nd July.

Trustee Savings Banks Bill [H.L.] [22nd July.

Walsall Corporation Bill [H.C.] [20th July.

In Committee :—

Civil Defence (Armed Forces) Bill [H.L.] [19th July.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read Second Time :—

Food and Drugs Amendment Bill [H.L.] [23rd July.

Read Third Time :—

Birmingham Corporation Bill [H.L.] [22nd July.

Mersey Docks and Harbour Board Bill [H.L.] [22nd July.

Orpington Urban District Council Bill [H.L.] [22nd July.

B. QUESTIONS

LEGAL AID AND ADVICE ACT (IMPLEMENTATION)

The ATTORNEY-GENERAL said that he hoped the time might come when it would be possible to implement the provisions of the Act as regards proceedings in the county court. The matter had been fully considered but it was extraordinarily difficult to arrive at a figure for the cost of such implementation. Legal aid was a valuable social service but there were priorities as between the demands of various social services. [19th July.

LEGAL AID (NATIONAL ASSISTANCE BOARD)

Mr. J. T. PRICE asked whether the Attorney-General was familiar with the procedure of the National Assistance Board in assessing the needs of applicants for legal aid certificates. Was he aware that a constituent had been granted a legal aid certificate and had commenced a serious legal action in the High Court, but had later had the certificate withdrawn on a re-assessment of means which intervened whilst the action was pending? Would he look into this procedure? The ATTORNEY-GENERAL undertook to do so. [19th July.

PLANNING APPEALS AND COMPULSORY PURCHASE ORDERS

Asked the effect of the measures taken to shorten the time for decisions in planning appeals and compulsory purchase orders, and whether he was now satisfied with the position in this matter, Mr. HAROLD MACMILLAN said that with regard to compulsory purchase orders he thought there had been no general difficulty. Their number was falling in any case. As to planning appeals, about 60 per cent. more cases had been disposed of during the first half of this year than in the same period in 1953, while the average time taken had been slowly falling over the past few months. The number of appeals was, however, still high, and he would continue to give these decisions as speedily as was compatible with full justice to the parties. [20th July.

NEGLECTED PROPERTIES (OWNERS)

Asked what action he proposed to compel landlords who had no address at which they could be traced, for the purpose of taking action against them when their properties fell into disrepair, to meet their statutory duties, Mr. HAROLD MACMILLAN said that the statutory powers for enabling local authorities to deal with unfit property belonging to an untraceable owner had been strengthened in the Housing Repairs and Rents Bill. [20th July.

HOSPITALS (LAW SUITS)

The ATTORNEY-GENERAL declined a suggestion that he should appoint a medical man on each local legal aid committee which

decided whether to grant legal aid in cases where hospital authorities were being sued.

Applications for legal aid in such cases were in practice supported by medical opinions. The appointment of a medically qualified member would not enable the Certifying Committee to dispense with that evidence, and, as he would not have seen the applicant, the medical member would not be able to add to it. The Lord Chancellor did not therefore consider that there was any need to amend s. 8 (4) of the Legal Aid and Advice Act, 1949, which provided that members of Certifying Committees should be barristers or solicitors. [22nd July.

Mr. IAN MACLEOD said that no special financial provision by insurance or otherwise was made to meet the contingency of actions by patients against regional boards for alleged personal injury through neglect or carelessness during their treatment. [22nd July.

APPROVED SCHOOL ORDERS

The HOME SECRETARY said that it was open to a court to authorise the detention in a remand home of a child or young person in respect of whom an approved school order had been made pending the completion of arrangements for his reception into a suitable school or on account of his ill-health. Such an order fell to be renewed by the court after each period of twenty-eight days and was therefore kept periodically under review by the courts. He was not aware of any case of non-compliance with an approved school order. [22nd July.

STATUTORY INSTRUMENTS

Brakes on Pedal Cycles Regulations, 1954. (S.I. 1954 No. 966.)
Bridlington (Repeal and Amendment of Local Enactments) Order, 1954. (S.I. 1954 No. 949.)
Cheltenham Rural Water Order, 1954. (S.I. 1954 No. 941.)
Civil Defence (Casualty Collection) Regulations, 1954. (S.I. 1954 No. 962.)
Defence Regulations (No. 5) Order, 1954. (S.I. 1954 No. 952.)
Defence Regulations (No. 6) Order, 1954. (S.I. 1954 No. 953.)
Dressmaking and Women's Light Clothing Wages Council (Scotland) Wages Regulation (Amendment) Order, 1954. (S.I. 1954 No. 939.) 5d.
Harrogate (Amendment of Local Enactment) Order, 1954. (S.I. 1954 No. 951.)
Imported Canned Fish (Revocation) Order, 1954. (S.I. 1954 No. 959.)
Irvine Pilotage (Amendment) Order, 1954. (S.I. 1954 No. 950.)
Jute Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1954. (S.I. 1954 No. 940.) 6d.
London Traffic (Prescribed Routes) (No. 15) Regulations, 1954. (S.I. 1954 No. 968.)
Motor Vehicles (Construction and Use) (Amendment) Regulations, 1954. (S.I. 1954 No. 942.)
Motor Vehicles (Construction and Use) (Track Laying Vehicles) (Amendment) Regulations, 1954. (S.I. 1954 No. 944.)
Motor Vehicles (Variation of Speed Limit) (Amendment) Regulations, 1954. (S.I. 1954 No. 943.)
Nurses (Regional Nurse-Training Committees) (Scotland) Amendment Order, 1954. (S.I. 1954 No. 960 (S.96).)
Railways (Charges for Government Traffic) (Revocation) Order, 1954. (S.I. 1954 No. 967.)
Retail Prices (Notices) (Revocation) Order, 1954. (S.I. 1954 No. 958.)
Safeguarding of Industries (Exemption) (No. 7) Order, 1954. (S.I. 1954 No. 956.)
Southend Water Order, 1954. (S.I. 1954 No. 955.)
State Scholarships Regulations, 1954. (S.I. 1954 No. 957.) 6d.
Stopping up of Highways (London) (No. 31) Order, 1954. (S.I. 1954 No. 936.)
Stopping up of Highways (London) (No. 32) Order, 1954. (S.I. 1954 No. 937.)
Wool (Guaranteed Average Price) Order, 1954. (S.I. 1954 No. 963.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Easement of Water—DISREPAIR OF PIPES—OBLIGATIONS AND RIGHTS OF DOMINANT AND SERVIENT OWNERS—EQUITABLE EASEMENT

Q. If land is conveyed by *A* " as trustee " and is expressed to be conveyed " together with full and free right and liberty to a supply of water for household purposes only from the water tank and well situated on the vendor's adjoining land through the pipes now used for conveying the same . . . To hold, etc., in fee simple," what is the purchaser's position if the supply fails owing to the disrepair of the pipes? If the above right is conveyed with the qualification " until a public water supply is available in the village of *X*," what is the effect? Is only an equitable easement created which should be registered?

A. In the absence of express or prescriptive obligation, the owner of the pipes is under no liability to repair them, but the dominant owner (the purchaser in this case) is entitled to repair the pipes (*Pomfret* v. *Ricroft* (1669), 1 Wms. Saund. 321). As the grant of the easement is for an estate in fee simple determinable, it is not capable of subsisting as a legal right over the land within s. 1 (2) (*a*) of the Law of Property Act, 1925, and is accordingly an equitable easement only within s. 2 (3) (iii) of the Law of Property Act, 1925, and if created after 1925 is void against a purchaser of the servient land unless registered in accordance with s. 10 (1), Class D (iii), of the Land Charges Act, 1925. See generally Gale on Easements, 12th ed., pp. 66 and 421 *et seq.*

Estate Duty—ACCOUNTABILITY—PERPETUAL RENT-CHARGE

Q. A testator, *X*, who died in 1904, devised his freehold farm, Blackacre, to his two sons in fee simple as tenants in common, subject to a rent-charge of £40 per annum to his daughter-in-law, *B*, during her life and thereafter to her sons in equal shares and their heirs for ever, but in case they should both die without lawful issue such rent-charge should be payable to his (*X's*) sons in equal shares and their heirs for ever, the children of a deceased son to take their parents' share. Blackacre was sold some years ago to *Y*, subject to the payment of the annuity of £40 per annum. The Estate Duty Office is now claiming estate duty in respect of the annual rent-charge of £40 charged on Blackacre which passed on the death of the sons of *B* without issue. Who is liable for the duty? There are now thirteen owners of the rent-charge. If *X's* personal representatives have to pay the duty can they reclaim the amount paid from the owners of the annuity or from the owner of Blackacre? The owner of Blackacre does not, of course, benefit, as he still has to pay a total of £40 per annum out of Blackacre.

A. *X* reserved out of Blackacre a perpetual rent-charge which he settled upon trusts so that in the events which have happened it passed, on the death of *B's* sons without issue, to the sons of *X* in certain shares. That rent-charge, which is charged on Blackacre and is, therefore, realty, is vested in the trustees of *X's* will upon the aforementioned trusts, and they must account for and pay the estate duty thereon. Since the rent-charge is realty, duty may be paid by eight yearly or sixteen half-yearly instalments, and so they may recoup themselves for the duty out of the £40 per annum as it comes into their hands.

Rent Restriction—POSSESSION OF LAND ADDED TO PARCELS—OFFER OF ORIGINAL PREMISES AS ALTERNATIVE ACCOMMODATION

Q. *A* is the owner of a small house and garden adjoining his own home which he let to *T* in 1938 on a weekly tenancy at 10s. per week. The following year *A* tells *T* that he can

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the " Points in Practice " Department, The Solicitors' Journal, 102-103 Fetter Lane, London, E.C.4.

They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with **a stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

have a further small piece of garden which lies between *A's* own home and the house let to *T* if *T* plants a hedge to separate it from *A's* own garden. No further rent was ever paid or asked in respect of this extra piece of garden. The small house is subject to the Rent Acts. *A* now wants to get possession of the piece of garden land to build a workshop on it for his son-in-law. *T* claims that the extra garden became part of the property let to him and the whole is now one letting. There is nothing in writing between *A* and *T*. Despite *Mann* v. *Merrill* [1945] 1 All E.R. 708 (C.A.), has *A* any grounds for terminating *T's* occupation of the garden land and applying to the court for possession ?

A. In our opinion, while it might be argued that the piece of land was the subject of a separate tenancy (rent free, the consideration being the planting of the hedge) it is difficult to imagine a court coming to any conclusion other than that the piece was added to the parcels, or that the old tenancy was surrendered and a new one created, adding the piece of land for the consideration mentioned. The argument that there was an independent letting would, we consider, come to grief when the question of term was raised. But the case seems eminently one for seeking possession, after notice to quit, under s. 3 (1) (*b*) of the Rent, etc., Restrictions (Amendment) Act, 1933 : that is to say, notice to quit should be accompanied by an offer to let the original premises to *T* as alternative accommodation. An offer of part of the premises has often been held to meet the requirements (see *Thompson* v. *Rolls* [1926] 2 K.B. 426 ; and *Parmee* v. *Mitchell* [1950] 2 K.B. 199 (C.A.)).

Landlord and Tenant—User—" Professional Man "—Chiropodist

Q. Our client is the landlord of premises and the user clause is : " Not to carry on or permit upon the premises demised or any part thereof any trade business or occupation or any nuisance nor use the same nor allow the same to be used for any illegal or immoral purpose but will use the same as a private residence or the professional residence or office of a professional man only." We understand that the premises are, in fact, being used by a chiropodist and we wonder if you can kindly inform us whether there is any authority as to whether this " profession " of chiropodist comes under the meaning of the clause.

A. On considering such authority as is available, we incline, subject to one point, to doubt whether there is any infringement of the covenant. Both Legislature and Judicature have fought shy of defining " profession." Revenue cases arising out of excess profits tax provisions have given us some authority, but it is important to note that the enactments concerned have themselves done something towards defining their scope by reference to such factors as the need for capital and dependence on personal qualifications, and that, as Scott, L.J., said in *Carr* v. *Inland Revenue Commissioners* [1944] 2 All E.R. 163 (C.A.), the primary object was to deal with profits which were likely to be greatly augmented by the effect of war upon supply and demand without any relation to the efforts of the owner of the business. His judgment and that of du Parcq, L.J. (notably the paragraph beginning : " It is dangerous to try to define the word ' profession ' "), are, nevertheless, instructive. Coming closer to the purpose in hand, the omission to define " profession " for Landlord and Tenant Act, 1927, Pt. I, purposes (compensation, etc., for loss of goodwill) (see s. 17 (3)) may be regarded as deliberate. In the light of the above, we incline to the view that a chiropodist, whose qualifications are knowledge and skill, would be held to be a professional man, though not a member of any of the learned professions. But that does not conclude the question, and the landlord might base an argument on the use of the word " office," a somewhat unusual feature in such a covenant. A court might well hold that the effect was that only such professional men as carried on their professional activities in offices were so to use the premises, e.g., solicitors, accountants, architects ; not doctors, dentists or chiropodists. We cannot, however, point to any case which would be " on all fours."

NOTES AND NEWS

Honours and Appointments

The Queen has been pleased to approve the appointment of Mr. George Gillespie Baker, O.B.E., to be Deputy Chairman of the Court of Quarter Sessions for the County of Salop with effect from 23rd July.

Mr. George Henry Burgess, solicitor, of Congleton, Clerk to the Borough and County Justices, has been reappointed for a further period of one year as Clerk of Indictments at Cheshire Quarter Sessions.

The following appointments are announced in the Colonial Legal Service : Mr. J. O. Ballard, Administrative Officer, Tanganyika, to be Resident Magistrate, Tanganyika ; Mr. S. E. Gomes, Puisne Judge, Trinidad, to be Senior Puisne Judge, Trinidad ; Mr. W. H. Irwin, Senior Puisne Judge, Trinidad, to be Puisne Judge, Nigeria ; Mr. I. E. G. Lewis, Resident Magistrate, Uganda, to be Puisne Judge, Uganda ; Mr. D. D. O'Donovan, Resident Magistrate, Northern Rhodesia, to be Senior Resident Magistrate, Northern Rhodesia ; Mr. J. S. Manyo-Plange, Puisne Judge, Nigeria, to be Puisne Judge, Gold Coast ; Mr. N. S. Tacey, Assistant Land Officer, Tanganyika, to be Resident Magistrate, Tanganyika ; Mr. E. G. Baber to be Resident Magistrate, Uganda ; Mr. J. P. Trainor to be Legal Officer, Federation of Malaya ; Mr. A. J. P. Doyle to be Crown Counsel, Aden ; Mr. N. R. T. Johnson to be Assistant Administrator General and Official Receiver, Northern Rhodesia ; and Mr. H. G. Platt to be Resident Magistrate, Tanganyika.

Miscellaneous

FORMER JAPANESE-OWNED REGISTERED UNITED KINGDOM TRADE MARKS

At the outbreak of war with Japan in 1941 there were a hundred or so trade marks on the United Kingdom register of trade marks, the proprietors of which were Japanese enemies. These marks remained on the register during the war in the names of the Japanese proprietors and have since been vested in the Custodian of Enemy Property for England. Subject to the protection of British and other Allied interests, it is now intended to clear the register of such of these marks as need no longer remain registered, and to return most of the remainder to the former Japanese proprietors or their successors in title. The marks will be treated individually ; the Custodian will consider each case on its merits and makes no general promise that any particular mark will be cancelled or returned. Broadly speaking, the procedure is that the former Japanese proprietors of certain categories of marks, or their successors in title, should, if still interested in their marks, request the assignment of the marks to them by the Custodian. An opportunity will be given to British and other Allied interests to object to any such assignment before the Custodian acts on the requests. If a *prima facie* case is made out against the return of a mark to the former Japanese proprietor or, in any case, if the mark in question was registered in Pt. A of the register since 8th December, 1934, the Custodian, failing an acceptable agreement between the parties concerned, will not assign the mark to the former proprietor. But the latter can in such a case attempt to recover the registration by applying to the Registrar of Trade Marks for re-registration of the mark, and the Custodian will consider cancelling the existing registration to allow the application to proceed. Full details are given in a notice published in the Trade Marks Journal and the Official Journal (Patents) of 21st July, 1954.

EXETER DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the County Borough of Exeter. The plan, as approved, will be deposited in the Town Clerk's office for inspection by the public.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

Survey of Public Rights of Way

The following notices of the preparation of draft maps and statements under s. 27 of the above Act, or of modifications to draft maps and statements already prepared, have appeared since the tables given in vol. 97 and at pp. 48, 116, 238 and 360, *ante* :—

Surveying Authority	Districts covered by draft map and statement	Date of notice	Last date for receipt of representations or objections
Bucks County Council	High Wycombe and Slough Boroughs; Beaconsfield, Chesham, Eton and Marlow Urban Districts; Amersham, Eton and Wycombe Rural Districts: modifications to draft map and statement noted at 97 SOL. J. 641	June, 1954	9th August, 1954
Caernarvonshire County Council	County of Caernarvon with the exception of the parishes of Aberdaron, Dolbenmaen and Llanystumdwy	29th June, 1954	31st December, 1954
Cardiganshire County Council	Tregaron Rural District Council	14th July, 1954	30th November, 1954
Denbighshire County Council	Denbigh County	3rd July, 1954	30th November, 1954
Leicester County Council	Ashby-de-la-Zouch, Ashby Woulds, Coalville, Hinckley and Oadby Urban Districts; Ashby-de-la-Zouch, Castle Donington, Lutterworth, Market Bosworth, Market Harborough and Melton and Belvoir Rural Districts: modifications to draft map and statement noted at 97 SOL. J. 109	20th May, 1954	18th June, 1954
Norfolk County Council	Diss, Sheringham and Wymondham Urban Districts: modifications to draft maps and statements of 30th June, 1953	9th July, 1954	15th August, 1954
	King's Lynn and Thetford Boroughs; New Hunstanton and Swaffham Urban Districts; Docking and Marshland Rural Districts	21st June, 1954	30th October, 1954
Northumberland County Council	Belford and Morpeth Rural Districts	17th May, 1954	30th October, 1954
Salop County Council	Bridgnorth Borough and Rural District: modifications to draft map and statement of 26th June, 1953	15th July, 1954	30th August, 1954
Southampton County Council	Ringwood and Fordingbridge Rural District: modifications to draft map and statement of July, 1953	May, 1954	25th June, 1954
Surrey County Council	Administrative County of Surrey: modifications to draft map and statement of 29th April, 1952	28th June, 1954	8th August, 1954
West Suffolk County Council	Bury St. Edmunds Borough: modifications to draft map and statement of 5th June, 1953	2nd July, 1954	5th August, 1954
	Thedwastre Rural District: modifications to draft map and statement of 12th December, 1952	2nd July, 1954	5th August, 1954
	Thingoe Rural District: modifications to draft map and statement of 5th June, 1953	2nd July, 1954	5th August, 1954
Westmorland County Council	North Westmorland Rural District: modifications to draft map and statement of 24th June, 1953	8th June, 1954	31st July, 1954

In addition the following *provisional* maps and statements have been announced: (1) by Gloucester County Borough Council, covering Robinswood Hill and land to the south and east thereof in the City of Gloucester, in respect of which applications to quarter sessions under s. 31 of the 1949 Act must be made by 13th August, 1954; (2) by Southampton County Council, covering Havant and Waterloo Urban District, in respect of which applications to quarter sessions would now be out of time.

A *definitive* map and statement has been prepared by Darlington County Borough Council, in respect of which applications to the High Court under Pt. III of the Sched. I to the 1949 Act would now be out of time.

WAR DAMAGE TO BRITISH PROPERTY IN LUXEMBOURG

In a notice issued by the Foreign Office and the Board of Trade, it is stated that the Luxembourg Government have now formally agreed to grant to individual British subjects, whose property in the Grand Duchy of Luxembourg has sustained war damage, treatment as regards compensation equal, with certain minor exceptions, to that extended by Luxembourg legislation to Luxembourg nationals in respect of similar loss or damage. Claims relating to losses of earnings and to personal injury are specifically excluded from the agreement.

The registration of property or claims with the Foreign Office, Administration of Enemy Property Department (formerly the Trading with the Enemy Department) or any other British Government Agency (at home or abroad) is not in itself sufficient to constitute a claim.

British subjects should submit their claims *direct* to the Office des Dommages de Guerre, Luxembourg, within three months of the date of publication of the agreement in Luxembourg, viz., 10th July, 1954.

Her Majesty's Legation at Luxembourg cannot act as agent in presenting individual claims. The lodgment of claims must be made (by not later than 9th October, 1954) and any necessary correspondence conducted by individual claimants with the Office des Dommages de Guerre *direct*.

At the Final Examination of The Law Society held on 14th, 15th, 16th and 17th June, 1954, of the 301 candidates who gave notice for the examination, 185 passed. The Council have awarded the following prizes: the Edmund Thomas Child Prize (value £18) to M. B. Conn, LL.B. London, and the John Mackrell Prize (value £15) to J. C. Cursham, LL.B. Nottingham.

Wills and Bequests

Mr. H. Bolton, formerly Town Clerk of the Borough of Sutton and Cheam, left £8,021 (£7,859 net).

Mr. B. F. Browne, solicitor, of Mayfair, left £7,255 (£1,563 net).

Mr. W. B. D. Shackleton, solicitor, of Bradford, left £15,304 (£12,529 net).

Mr. C. Styring, solicitor, of Sheffield, left £46,512 (£42,136 net).

Mr. H. M. F. White, retired solicitor, of the Strand, W.C.2, left £36,172 (£35,556 net).

OBITUARY

MR. J. AMERY-PARKES

Mr. John Amery-Parkes, retired solicitor, of the Strand, W.C.2, died on 19th July, aged 87. He was a founder member of the Automobile Association in 1905.

PRINCIPAL ARTICLES APPEARING IN VOL. 98

3rd to 31st July, 1954

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